

AMENDED IN ASSEMBLY JANUARY 5, 2004

AMENDED IN ASSEMBLY MAY 7, 2003

AMENDED IN ASSEMBLY APRIL 8, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1643

**Introduced by Assembly Member Ridley-Thomas
(Coauthors: Assembly Members Kehoe, Lieber, and Montanez)**

February 21, 2003

An act to ~~amend Sections 2750.5, 3357, 4157, and 5705 of add~~ *Section 2750.7 to the Labor Code, relating to employment.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1643, as amended, Ridley-Thomas. Employment.

Under existing law, there is a rebuttable presumption that a worker is an employee, and not an independent contractor for various purposes in employment law including rules governing employees and workers' compensation, unless satisfactory proof, as specified, of independent contractor status exists.

~~This bill would establish a new category of workers, contract service providers, if specified criteria are satisfied. The bill would make other changes in the Labor Code to provide for this new category.~~

This bill would require the Employment Development Department to conduct a study to determine the number of small business owners that objected to being classified as employees over the last 5 years, the number of those owners found to be independent contractors, and the length of time that the department took to make a final determination in each case. The bill would further require the department to report its

findings and any recommendations to the Legislature no later than July 1, 2005.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

~~SECTION 1.—Section 2750.5 of the Labor Code is amended~~

SECTION 1. Section 2750.7 is added to the Labor Code, to read:

2750.7. (a) The Employment Development Department shall conduct a study of all the following:

(1) The number of owners of small businesses, as defined in subparagraph (1) of subdivision (d) of Section 14837 of the Government Code, that objected to being classified as employees from January 1, 1999, to December 31, 2003, inclusive.

(2) The number of small business owners that the department found to be independent contractors in each case described in paragraph (1).

(3) The length of time that the department took to make a final determination in each case described in paragraph (1).

(b) The department shall report its findings and any recommendations to the Legislature no later than July 1, 2005.

(c) The study and report required pursuant to this section shall be conducted within existing resources of the department.

~~to read:~~

~~2750.5.—(a) There is a rebuttable presumption affecting the burden of proof that a worker or business performing services for which a license is required pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, or performing such services for a person who is required to obtain such a license, is an employee rather than an independent contractor or contract service provider.~~

~~(b) Proof of independent contractor status includes satisfactory proof of these factors:~~

~~(1) That the individual has the right to control and discretion as to the manner of performance of the contract for services in that the result of the work and not the means by which it is accomplished is the primary factor bargained for.~~

1 ~~(2) That the individual is customarily engaged in an~~
2 ~~independently established business.~~

3 ~~(3) That the individual's independent contractor status is bona~~
4 ~~fide and not a subterfuge to avoid employee status. A bona fide~~
5 ~~independent contractor status is further evidenced by the presence~~
6 ~~of cumulative factors such as substantial investment other than~~
7 ~~personal services in the business, holding out to be in business for~~
8 ~~oneself, bargaining for a contract to complete a specific project for~~
9 ~~compensation by project rather than by time, control over the time~~
10 ~~and place the work is performed, supplying the tools or~~
11 ~~instrumentalities used in the work other than tools and~~
12 ~~instrumentalities normally and customarily provided by~~
13 ~~employees, hiring employees, performing work that is not~~
14 ~~ordinarily in the course of the principal's work, performing work~~
15 ~~that requires a particular skill, holding a license pursuant to the~~
16 ~~Business and Professions Code, the intent by the parties that the~~
17 ~~work relationship is of an independent contractor status, or that the~~
18 ~~relationship is not severable or terminable at will by the principal~~
19 ~~but gives rise to an action for breach of contract.~~

20 ~~In addition to the factors contained in paragraphs (1), (2), and~~
21 ~~(3), any person performing any function or activity for which a~~
22 ~~license is required pursuant to Chapter 9 (commencing with~~
23 ~~Section 7000) of Division 3 of the Business and Professions Code~~
24 ~~shall hold a valid contractors' license as a condition of having~~
25 ~~independent contractor status.~~

26 ~~(c) Proof of contract service provider status includes~~
27 ~~satisfactory proof of these factors:~~

28 ~~(1) The business is a certified California small business, as~~
29 ~~defined in subparagraph (1) of subdivision (d) of Section 14837 of~~
30 ~~the Government Code.~~

31 ~~(2) The business possesses a valid California business license~~
32 ~~or pays business taxes in the jurisdiction in which it is located.~~

33 ~~(3) That the contract service provider has been in operation for~~
34 ~~two or more years.~~

35 ~~(d) For purposes of workers' compensation law, this~~
36 ~~presumption is a supplement to the existing statutory definitions~~
37 ~~of employee, independent contractor, and contract service~~
38 ~~provider, and is not intended to lessen the coverage of employees~~
39 ~~under Division 4 and Division 5.~~

40 ~~SEC. 2. Section 3357 of the Labor Code is amended to read:~~

1 ~~3357.—Any person rendering service for another, other than as~~
2 ~~an independent contractor or contract service provider, or unless~~
3 ~~expressly excluded herein, is presumed to be an employee.~~

4 ~~SEC. 3.—Section 4157 of the Labor Code is amended to read:~~

5 ~~4157.—Where any employer has made an election pursuant to~~
6 ~~this chapter to include under the compensation provisions of this~~
7 ~~division an independent contractor or contract service provider~~
8 ~~engaged in vending, selling, offering for sale, or delivering~~
9 ~~directly to the public any newspaper, magazine, or periodical, the~~
10 ~~status of such person as an independent contractor or contract~~
11 ~~service provider for all other purposes shall not be affected by such~~
12 ~~election.~~

13 ~~SEC. 4.—Section 5705 of the Labor Code is amended to read:~~

14 ~~5705.—The burden of proof rests upon the party or lien~~
15 ~~claimant holding the affirmative of the issue. The following are~~
16 ~~affirmative defenses, and the burden of proof rests upon the~~
17 ~~employer to establish them:~~

18 ~~(a) That an injured person claiming to be an employee was an~~
19 ~~independent contractor or contract service provider or otherwise~~
20 ~~excluded from the protection of this division where there is proof~~
21 ~~that the injured person was at the time of his or her injury actually~~
22 ~~performing service for the alleged employer.~~

23 ~~(b) Intoxication of an employee causing his or her injury.~~

24 ~~(c) Willful misconduct of an employee causing his or her~~
25 ~~injury.~~

26 ~~(d) Aggravation of disability by unreasonable conduct of the~~
27 ~~employee.~~

28 ~~(e) Prejudice to the employer by failure of the employee to give~~
29 ~~notice, as required by Sections 5400 and 5401.~~